IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

J U D G M E N T
IN
S.B. Criminal Jail Appeal No.1084/2001

Radheyshyam S/o Ram Kumar
...accused-appellant
Versus
State of Rajasthan through P.P.
...respondent

Date of Judgment :::: 5th of January, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Anurag Sharma, Advocate, with
Shri Mukesh Paul, Counsel for the accused-appellant
Shri Arun Sharma, P.P., for the State
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By the Court,

Accused-appellant Radheyshyam S/o Ram Kumar, By caste Meena, has preferred this appeal from Jail through Superintendent, Central Jail, Jaipur, challenging his conviction and sentence awarded by the Additional Sessions Judge, Neem-ka-Thana, vide judgment and order dated 3rd November, 2001, in Sessions Case No.67/2000, whereby the accused-appellant has been convicted under Section 376 (2) IPC to ten years rigorous imprisonment and a fine of Rs.20,000/- (Rupees twenty thousand), in default of payment of fine, to further undergo two years

additional imprisonment; and under Section 342 IPC to six months simple imprisonment and a fine of Rs.500/-, in default of payment of fine, to further undergo one week's additional imprisonment.

Exhibit-P-2, a written report, was lodged by PW-2 Jagdish, the father of prosecutrix Ms. Sonu, who was aged about 5 years, wherein it was alleged that he and his wife, both, had gone in the temple of Shankar in their village and when they returned from there at about 12.00 at night then they saw that Ms. Sonu is not there, therefore, he asked his mother as to where Sonu had gone then it was told by his mother that she had gone to toilet. After some time he heard hue and cry and when he went then he saw that accused Radheyshyam was committing forcibly sexual intercourse with his daughter.

On the basis of the above report, the police registered a case under Section 376, IPC. After completion of investigation a challan was filed against the accused under Sections 376 (2) and 342 IPC. The learned trial court framed charge for the above offence against the accused-appellant on 18th of June, 2001.

The prosecution, in support of its case, examined PW-1 to PW-11, and produced documentary

evidence Exhibit P-1 to Exhibit P-8. Thereafter statement of accused was recorded under Section 311 of the Cr.P.C., wherein it was stated that he has falsely been implicated in the matter as he did not cast vote in favour of Kalu Ram, Sarpanch, who is friend of Jagdish, the father of prosecutrix.

The learned trial court, after considering the oral and documentary evidence as well as the submissions on behalf of both the parties, convicted and sentenced the accused-appellant as mentioned above.

The learned counsel for the accused-appellant contended that this is a case of falsely implication of the accused-appellant by the complainant party and the learned trial court has not considered the explanation given by the accused in his statement under Section 311, Cr.P.C. He also contended that the FSL report was not produced in the case by the prosecution. Therefore, he prayed that the judgment and order passed by the learned trial court be set-aside and accused be acquitted.

The learned Public Prosecutor contended that there is overwhelming evidence in the present case to connect the accused with the crime. The learned trial court was right in convicting and sentencing the

accused-appellant. He, therefore, contended that this is not a case where this court should interfere in the finding of the learned trial court.

I have considered the rival submissions of the learned counsel for the parties and minutely scanned the impugned judgment and the record of the trial court.

Exhibit P-2 is the written report lodged by PW-2 Jagdish Singh, the father of the prosecutrix. The accused was arrested on the same day i.e. 14th of August, 2000, vide arrest-memo Exhibit P-5. Exhibit P-1 is the medical-report of prosecutrix Ms. Sonu, who was examined by Medical Board. PW-1 Dr. Laxmi Narain, who examined prosecutrix Sonu, has stated before the Court that, in the opinion of the medical board, a recent sexual intercourse was committed with Sonu. He has proved the medical report of Sonu, which was marked as Exhibit P-1. As per medical-report, the minimum age of Sonu is six years and radiological age is between six and ten years. PW-2 Jagdish has stated, in his statement, about commitment of forcibly sexual intercourse by accused Radheyshyam with his daughter Sonu, aged about six years. Ms. Sonu, the prosecutrix, was also examined in the present matter as PW-3. Some questions were put to her by the trial court to

ascertain whether she is capable to give her statement and after recording a satisfaction by the trial court, her statement was recorded wherein she stated about forcibly sexual intercourse with her by accused Radheyshyam. PW-4 Kayam Kanwar is the mother of prosecutrix Sonu who has also stated about the incident. PW-7 Ummed Kanwar is the mother of PW-2 Jagdish and grandmother of prosecutrix Sonu, who has also corroborated the statement of PW-2, PW-3 and PW-4. The investigating officer has also been examined in the present matter, who has proved the other documentary evidence in the matter and result of the investigation also.

The accused Radheyshyam was also examined medically and according to the statement of PW-8 Dr. Surendra Kumar Meena, the accused was capable to commit sexual intercourse. PW-8 has also stated that, as per the examination of accused Radheyshyam, he found that he committed sexual intercourse within 24 hours. Exhibit P-7, the medical-report of accused, has also been proved in the case.

In these circumstances I find that this is a case wherein there is overwhelming evidence produced on behalf of the prosecution to connect the accused with the crime. The prosecution has proved that it was

the accused who committed forcibly sexual intercourse with prosecutrix Sonu, aged about six years. The learned trial court has considered the oral and documentary evidence in detail and has rightly recorded a finding against the accused-appellant.

No illegality or perversity has been pointed out in the finding of the learned trial court by the learned counsel for the accused-appellant so as to interfere in it.

I do not find any merit in this appeal and the same is accordingly dismissed.

(Narendra Kumar Jain), J.

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